

REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Claims 2-9 and 11-20 remain pending in the present application. No changes to the claims have been made in this Response.

Applicant notes with appreciation the Examiner's indication that claims 2-6 and 11-20 are allowed and that claim 8 would be allowed if rewritten in independent form.

Claims 7-9 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant respectfully traverses this rejection for the reasons presented below.

According to the Examiner, claim 7 is indefinite because it uses "alternate terminology (i.e., "or") on line 14 and the Examiner further cautions that the use of such terminology should be avoided. Applicant respectfully submits that this treatment of the term "or" is not consistent with current Patent Office procedures. For example, M.P.E.P. § 2173.05(h)(I) expressly addresses the use of "or" in the claims and definitively states that "[a]lternative expressions using 'or' are acceptable...." Applicant submits that the mere use of the term "or" in claim 7 does not render it indefinite. If the Examiner continues to maintain that claim 7 is indefinite, applicant respectfully requests that the Examiner explain the basis for this allegation. Accordingly, applicant respectfully requests that the above rejection of claim 7, as well as claims 8 -9 depending therefrom, be withdrawn.

Claim 7 stands rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,423,313 ("the '313 patent"). In addition, claim 9 stands rejected under 35 U.S.C. § 103 as being unpatentable over the '313 patent in view of U.S. Patent No. 4,487,155 to Olesen et al. ("the '155 patent"). Applicant respectfully traverses these rejections for the reasons presented below.

Independent claim 7 recites a flow control system that is coupled between three items: (1) the patient circuit, (2) the insufflation catheter, and (3) the source of insufflation gas. The claimed flow control system controls the flow of gas between the patient circuit, the

insufflation catheter, and the source of insufflation gas. Applicant respectfully submits that the '313 patent does not teach suggestion this flow control system.

Control unit 42 in the '313 patent controls a device (valves) 24 that, in turn, control the flow of gas to line 20. There is no connection in the '313 patent between the source of insufflation gas (e.g., lines 25, 26, or 27) and the patient circuit. Instead, all of the insufflation gas in the '313 patent is delivered to (or prevented from being delivered to) the insufflation catheter (line 20). It should be noted that the applicant does not admit that line 20 in the '313 patent corresponds to the claimed insufflation catheter or that control unit 42 corresponds to the claimed flow control system. Rather, the applicant is using the Examiner's proposed interpretations to show that even under these suggested interpretations, there are limitations expressly recited in claim 7 that are not taught or suggested by the '313 patent.

Claim 7 further recites that the flow control system includes a first selectively actuatable valve connected between the source of insufflation gas, the insufflation catheter, and the patient circuit, wherein the first valve (in a first configuration) is adapted to be arranged to both (1) communicate the insufflation catheter with the source of insufflation gas and (2) disconnect the patient circuit from the source of insufflation gas. It is not possible for the valve system taught by the '313 patent to perform both of these operations. This is because there is no communication between the source of insufflation gas and the patient circuit in the system of the '313 patent.

Similarly, claim 7 further recites that the first selectively actuatable valve (in a second configuration) is adapted to be arranged to both (1) communicate the source of insufflation gas with the patient circuit and (2) disconnect the insufflation catheter from the patient circuit and the source of insufflation gas. Again, it is not possible for the valve system taught by the '313 patent to perform both of these operations because of its limited configuration. If the Examiner disagrees, applicant kindly requests that the Examiner explain (perhaps using a flow diagram) how these flow control operations (in the first or second configuration) can be accomplished by the limited system of the '313 patent.

The '155 patent is cited as teaching a feature included in dependent claim 9. While the applicant does not admit that these references can be combined or that the resulting combination, if possible, includes all of the limitations of claim 9, applicant notes that the '155 patent does not provide the features of claim 7 missing from the '313 patent. Nor does the '155 patent provide any teaching or suggestion to modify the system of the '313 patent to include the features of claim 7 missing from that reference.

For the reasons presented above, applicant respectfully submits that independent claim 7 is not anticipated or rendered obvious by the cited references. In addition, claim 9 is also not anticipated or rendered obvious due to their dependency from independent claim 7. Accordingly, applicant respectfully requests that the above rejections of claims 7 and 9 be withdrawn.

This response is being filed within the three-month statutory response period which expires on June 18, 2008. In addition, no additional claim fees are believed to be required as a result of the above amendments to the claims. Nevertheless, the Commission is authorized to charge any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 50-0558.

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to the effect is earnestly solicited.

Respectfully submitted,

By 

Michael W. Haas
Reg. No.: 35,174
Tel. No.: (724) 387-5026
Fax No.: (724) 387-5021

RESPIRONICS, INC.
1010 Murry Ridge Lane
Murrysville, PA 15668-8525

Note: The Commissioner is authorized to charge any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 50-0558.